

Hon. Stanley A. Bastian

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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON
AT YAKIMA

STATE OF WASHINGTON, STATE
OF COLORADO, STATE OF
CONNECTICUT, STATE OF
ILLINOIS, STATE OF MARYLAND,
COMMONWEALTH OF
MASSACHUSETTS, STATE OF
MICHIGAN, STATE OF MINNESOTA,
STATE OF OREGON, STATE OF
RHODE ISLAND, STATE OF
VERMONT, COMMONWEALTH OF
VIRGINIA, STATE OF WISCONSIN,

Plaintiffs,

v.

DONALD J. TRUMP, in his official
capacity as President of the United States
of America; UNITED STATES OF
AMERICA; LOUIS DEJOY, in his
official capacity as Postmaster General;
UNITED STATES POSTAL SERVICE,

Defendants.

No. 1:20-cv-03127-SAB

BRIEF OF *AMICI*
CURIAE BRADY AND
TEAM ENOUGH IN
SUPPORT OF
PLAINTIFFS' MOTION
FOR PRELIMINARY
INJUNCTION

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INTRODUCTION

The fundamental promise of an American “government of the people, by the people, for the people” relies on Americans voting to choose their representatives. Democracy becomes unrepresentative – dysfunctional – when the right to vote is obstructed. The failure of American government to effectively address our gun violence epidemic is a particularly egregious consequence of dysfunctional democracy. Every day in the United States, more than 300 people are shot; over 100 of these individuals do not survive their wounds.¹ Gun violence impacts Black and Brown communities disproportionately: one recent study estimates that if current death rates hold, one in 38 Black men will be killed by gunfire.² Most Americans support common-sense legislation to prevent gun violence, but such legislation is not

¹ KEY STATISTICS, Bradyunited.org, <https://www.bradyunited.org/key-statistics>.

² Dr. Ashwini R. Sehgal, *Lifetime Risk of Death from Firearm Injuries, Drug Overdoses and Motor Vehicle Accidents in the United States*, AM. J. OF MED. (2020), available at [https://www.amjmed.com/article/S0002-9343\(20\)30363-6/pdf](https://www.amjmed.com/article/S0002-9343(20)30363-6/pdf).

1 the law. Protecting the ability of Americans to vote is critical for protecting
 2 American lives from gun violence.
 3

4 Today there is unprecedented momentum and support for gun violence
 5 prevention policies. But the coronavirus pandemic, and the real threat of
 6 armed intimidation at the polls, may keep many Americans from voting –
 7 unless they are able to vote by mail. State and local officials and individual
 8 citizens have, justifiably, come to rely upon an effective United States Postal
 9 Service (“USPS”) in planning how to administer and participate in federal,
 10 state, and local elections. Voting by mail has never been more important.
 11

12 Knowing the importance of voting by mail in the November 2020
 13 elections, Defendants have sought to diminish USPS services to make voting
 14 harder. If they succeed, it is likely that the gun lobby, not the American
 15 people, will decide much of our gun policy, and that our gun violence
 16 epidemic will continue unabated. *Amici* write to support Plaintiffs’ effort to
 17 stop Defendants’ illegal, unconstitutional and undemocratic activities.
 18
 19

20 **STATEMENTS OF INTERESTS OF AMICI**

21 A leader in gun violence prevention for over 40 years, *amicus curiae*
 22 Brady is one of the nation’s oldest and largest non-partisan, non-profit
 23 organizations dedicated to reducing gun violence through education, research,
 24
 25
 26

1 legal advocacy and political action. Brady has filed numerous briefs as
 2 *amicus curiae* in cases involving state and federal firearms laws.

3
 4 *Amicus curiae* Team ENOUGH is a youth-led, Brady-sponsored
 5 initiative that educates and mobilizes young people in the fight to end gun
 6 violence. Team ENOUGH is committed to bringing a fresh perspective and a
 7 common-sense approach to America’s gun policy, and has an interest in
 8 promoting laws that seek to help end gun violence.
 9

10 *Amici* have dedicated significant effort to ensure that every American is
 11 able to vote in a safe manner in the November 2020 elections, including
 12 launching the “Voting Access Saves Lives” (“VASL”) campaign, which,
 13 among other things, provides a state action toolkit that identifies state voting
 14 laws and information.³
 15

16 **ARGUMENT**

17 **A. Defendants’ Voter Suppression Efforts in Context**

18
 19 Voter suppression has taken on a variety of insidious forms, including
 20 reducing the number of polling places to make it harder for individuals
 21

22
 23 ³ Brady, Team ENOUGH, and March For Our Lives, *Voting Access*
 24 *Saves Lives: State Actions*, available at
 25 <https://www.bradyunited.org/program/democracy> (last visited Sep. 8, 2020).
 26

(particularly individuals from communities of color) to vote.⁴ Poor and marginalized communities most likely to be targeted by voter suppression efforts are those most disproportionately impacted by gun violence.⁵ Defendants' actions preventing voting by mail exacerbates voter suppression trends on a national scale. As a result, individuals may be forced to choose between not voting at all, or risking their lives through exposure to a deadly virus or violence at the hands of armed agitators in order to vote in person.

Voting by mail is for many the best, if not only, mechanism by which they can vote in 2020 without risking their lives. Congregating in enclosed,

⁴ See, e.g., Mark Niesse, Maya T. Prabhu and Jacquelyn Elias, *Voting Precincts Closed Across Georgia Since Election Oversight Lifted*, ATLANTA J. CONST. (Sep. 4, 2018), available at <https://www.ajc.com/news/state--regional-govt--politics/voting-precincts-closed-across-georgia-since-election-oversight-lifted/bBkHxptlim0Gp9pKu7dfrN/>.

⁵ See, e.g., Richard V. Reeves and Sarah E. Holmes, *Guns and Race: The Different Worlds of Black and White Americans*, Brookings Inst. (Dec. 15, 2015), available at <https://www.brookings.edu/blog/social-mobility-memos/2015/12/15/guns-and-race-the-different-worlds-of-black-and-white-americans/> (compiling CDC data between 2011-2013).

crowded spaces for extended periods (such as a busy polling station with long lines) is particularly likely to enhance the risk of the transmission of COVID-19; individuals from communities of color are most likely to face these dangerous conditions if forced to vote in person.⁶ COVID-19 has already had a disproportionately devastating impact on these communities.⁷ Americans also face a real, credible fear of armed intimidation at the polls, including racially motivated intimidators carrying firearms at or near polling places.⁸

⁶ See Matthew Harwood, *Explainer: Why a Vote-by Mail Option Is Necessary*, Brennan Ctr. (Apr. 7, 2020), available at <https://www.brennancenter.org/our-work/research-reports/why-vote-mail-option-necessary>.

⁷ See Maria Godoy, *What Do Coronavirus Racial Disparities Look Like State By State?*, NPR (May 30, 2020), available at <https://www.npr.org/sections/health-shots/2020/05/30/865413079/what-do-coronavirus-racial-disparities-look-like-state-by-state>.

⁸ See, e.g., Graham Kates, *Homicide Charges Announced Against Kyle Rittenhouse, Accused of Killing 2 at Kenosha Protests*, CBS NEWS (Aug. 30, 2020), available at <https://www.cbsnews.com/news/kyle-rittenhouse->

1 The significant dual threats of coronavirus and armed intimidation make it
 2 critical that USPS service effectively enables mail-in voting.
 3

4 **B. Voter Suppression Plays a Key Role in Preventing**
 5 **Gun Violence Prevention Measures Becoming Law**

6 Gun violence prevention measures that Brady and Team ENOUGH
 7 have campaigned for enjoy overwhelming support among Americans. For
 8 example, requiring background checks for all gun sales – rather than only
 9 sales at federally licensed gun dealers, as federal law currently requires (*see*
 10 18 U.S.C. § 922(t)) – has consistently enjoyed around 90 percent support from
 11 the American populace as whole,⁹ including most gun owners.¹⁰ Extreme
 12 Risk Protection Order (“ERPO”) laws also enjoy overwhelming support.¹¹
 13
 14

15 homicide-charges-kenosha-shooting-first-degree-homicide-jacob-blake-
 16 protest-wisconsin/.

17
 18 ⁹ *See, e.g.,* Domenico Montanaro, *Americans Largely Support Gun*
 19 *Restrictions to ‘Do Something’ About Gun Violence*, NPR (Aug. 10, 2019),
 20 available at [https://www.npr.org/2019/08/10/749792493/americans-largely-](https://www.npr.org/2019/08/10/749792493/americans-largely-support-gun-restrictions-to-do-something-about-gun-violence)
 21 [support-gun-restrictions-to-do-something-about-gun-violence](https://www.npr.org/2019/08/10/749792493/americans-largely-support-gun-restrictions-to-do-something-about-gun-violence) (citing 89%
 22 support in a July 2019 poll).
 23
 24

25 ¹⁰ *See, e.g.,* Edith Honan, *Poll Finds Gun Owners, Even NRA Members,*
 26 *Back Some Restrictions*, REUTERS (Jul. 24, 2012), available at

1 In a functional representative democracy, measures supported by such
 2 huge majorities would be law. But voter suppression has played a critical role
 3 in preventing enactment of such popular gun violence prevention laws.

4
 5 H.R. 8 – a universal background check bill which was passed by the House of
 6 Representative’s as one of its first legislative priorities in 2019 – provides a
 7 compelling example.¹² This bill has languished for well over a year without
 8 Senate Majority Leader McConnell even allowing Senators to vote on it.

9 When Senators know that the groups most affected by and enraged about the
 10

11
 12

<https://www.reuters.com/article/us-usa-shooting-denver-guns/poll-finds-gun->

13 owners-even-nra-members-back-some-restrictions-

14 idUSBRE86O02O20120725 (showing 74% of current or former NRA

15 members and 87% of other gun owners supported universal background

16 checks).

17
 18
 19 ¹¹ Everytown for Gun Safety, *Fact Sheet: Extreme Risk Laws Save*
 20 *Lives*, available at [https://everytownresearch.org/report/extreme-risk-laws-](https://everytownresearch.org/report/extreme-risk-laws-save-lives/)
 21 [save-lives/](https://everytownresearch.org/report/extreme-risk-laws-save-lives/) (last visited Sep. 8 2020) (reflecting 85% support for a federal
 22 ERPO law).

23
 24
 25 ¹² The Bipartisan Background Checks Act of 2019, H.R. 8, 116th Cong.
 26 (2019).

gun violence epidemic will be unable to hold them accountable at the polls, they feel emboldened to cater to the National Rifle Association and the billion-dollar gun industry it represents rather than voters. *Amici* join Plaintiffs in demanding that the federal government cease its efforts to further reduce its accountability to the will of the people through voter suppression efforts because these efforts will pose significant obstacles to ending widespread gun violence in the United States.

C. Supplemental Legal Authority

Amici agree with Plaintiffs' analysis of how Defendants have violated various constitutional and statutory provisions. *See* Complaint (ECF No. 1). Here *amici* raise two additional points in support of Plaintiffs' motion.

1. Defendants' Actions Violate the Guarantee Clause

Changes to the USPS affect states' ability to effectively conduct their own elections. *See, e.g.*, Complaint at 41- 43. This violates the Guarantee Clause's requirement that "[t]he United States shall guarantee to every State in this Union a Republican Form of Government." U.S. Const., art. IV, § 4. *See also In re Duncan*, 139 U.S. 449, 461 (1891); *Gregory v. Ashcroft*, 501 U.S. 452, 463 (1991). Although Guarantee Clause claims have been considered nonjusticiable, the Supreme Court has questioned this rule. *See New York v. United States*, 505 U.S. 144, 184-185 (1992); *cf. Gregory*, 501

U.S. at 463. This is precisely the extraordinary case where the Guarantee Clause should serve as an additional constraint on the power of the federal government to undermine state sovereignty.

2. The Federalist System of Dual Sovereigns is Guaranteed by the Tenth Amendment

The Supreme Court (and other courts) have repeatedly stressed the critical importance of preserving “the constitutional balance between the National Government and the States.” *Bond v. United States*, 572 U.S. 844, 866 (2014) (quoting prior decision in the *Bond* case) (internal quotation omitted); *see also, e.g., Matter of Application of Cesar Adrian Vargas for Admission to the Bar of the State of New York*, 131 A.D.3d 4, 24 (N.Y. App. Div. 2015) (“The ability, indeed the right, of the states to structure their governmental [] processes as they see fit is essential to the sovereignty protected by the Tenth Amendment”). In *Bond*, the Court re-emphasized that “[b]y denying any one government complete jurisdiction over all the concerns of public life, federalism protects the liberty of the individual from arbitrary power.” 572 U.S. at 863. *Bond* and *Gregory* demonstrate that the integrity of the federalist system is a necessary check on federal interference with state sovereignty – here, protecting states’ administration of their own elections.

Beyond the Guarantee Clause and the Tenth Amendment, the Defendants' actions also violate a number of constitutional provisions not expressly addressed by Plaintiffs – including, but not limited to, the equal protection component of the Due Process Clause of the Fifth Amendment and Art. II, § 1.

CONCLUSION

The public health crisis of gun violence plaguing America can only be solved if the federal government is responsive to the will of citizens. Defendants' efforts to eliminate or curtail voting by mail at a time when in-person voting may be life-threatening are unconstitutional, illegal and undemocratic measures that would prevent Americans from being truly represented and obtaining the gun violence prevention policies they want and need.

DATED this 11th day of September, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on September 11, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record who receives CM/ECF notification.

DATED this 11th day of September, 2020.

By: s/Theresa M. DeMonte
Theresa M. DeMonte, WSBA No. 43994